

Johnson Creek Fence

Near Wise River, MT

FWP # 14-36



*Prepared by:
Paul Valle
April, 2014*



**Montana Fish,
Wildlife & Parks**





Montana Fish, Wildlife & Parks

Design & Construction
1522 9th Avenue
P.O. Box 200701
Helena, MT 59620-0701
(406) 841-4001 | FAX: (406) 841-4004

April 8, 2014

RE: Johnson Creek Fence Project, FWP # 14-36

To Whom It May Concern:

Montana Fish, Wildlife & Parks is proposing a project at Johnson Creek located near Wise River, MT. The projects consist of construction of ½ mile of 3 wire fence and rail jackleg fence with work being completed by June 15, 2014.

Your company has been selected for a limited solicitation bid based on the attached Project Documents. There will be a pre-bid meeting held **April 23, 2014 at 10:00 A.M.** Participants are to meet at **Wise River Club at Wise River, MT.**

Sealed bids will be received up to and including **3:00 PM** on **May 1, 2014**, and will be publicly opened and read aloud in the offices of Design and Construction, 1522 9th Avenue, P.O. Box 200701, Helena, MT 59620-0701, for the **Johnson Creek Fence Project, FWP #14-36 near Wise River, MT.**

Thank you. If you have any questions, please feel free to contact Paul Valle, Project Manager at 406-841-4013.

Sincerely,

Sue Rice
Contracts Manager
Design & Construction

Encl.

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NOTICE TO BIDDERS

Montana Fish, Wildlife & Parks, Design & Construction receives its mail through the Central Mail Service of the Department of Administration. Therefore, USPS priority mail or other next day services may not reach the offices of Design & Construction if sent the day before. As we have no control over the Central Mail service, contractor's are advised that next day mailing of any type through the Post Office may not reach the D&C offices in time for bid openings and will be returned un-opened to the late bidder.

In addition, other delivery services such as FedEx or UPS may not reach the Design & Construction by the time of bid opening unless morning delivery is specified. The only address for delivery services is as follows:

**1522 9TH Avenue
Helena, MT 59601**

Contractors should send proposals early enough to guarantee that they are delivered to the D&C offices at 1522 9TH Avenue in Helena, not just received by the Central Mail Service, by bid opening time. We suggest early mailing, and if you find it necessary to alter your bid, a fax modification is allowed. Please refer to the Invitation to Bidders section of these specifications for more information.

Thank you for your cooperation in this matter.



INVITATION TO BID

Sealed bids will be received up to and including **3:00 PM** on **May 1, 2014**, and will be publicly opened and read aloud in the offices of the Design and Construction, 1522 9TH Avenue, P.O. Box 200701, Helena, MT 59620-0701, for: **Johnson Creek Fence Project, FWP # 14-36 near Wise River, MT.**

Bids shall be submitted on the form provided within the Contract Documents. Contract documents may be secured from the Montana Fish, Wildlife, & Parks, Design & Construction Upcoming Bid Openings Web Site at:

<http://fwp.mt.gov/doingBusiness/designAndConstruction/upcomingBidOpenings.html>

For more information contact the following:

**Montana Fish, Wildlife, & Parks
Design & Construction
1522 9TH Avenue
P O Box 200701
Helena, MT 59620-0701
PH: 406-841-4000 FX: 406-841-4004**

A refundable deposit of **-0-** is required for each plan set.

A PRE-BID WALK-THROUGH IS SCHEDULED FOR April 23, 2014 AT 10:00 AM.
PARTICIPANTS SHOULD MEET AT WISE RIVER CLUB AT WISE RIVER, MT.
ATTENDANCE IS STRONGLY RECOMMENDED.

All bids over \$25,000.00 must be accompanied by a bid security meeting the requirements of the State of Montana in the amount of 10% of the total bid. After award, the successful bidder must furnish an approved Performance Security and a Labor & Material Payment Security each in the amount of 100% of the contract.

No bidder may withdraw his bid for at least thirty (30) calendar days after the scheduled time for receipt of bids except as noted in the Instruction to Bidders.

The Owner reserves the right to reject any or all bids and to waive any and all irregularities or informalities and the right to determine what constitutes any and all irregularities or informalities.

DESIGN AND CONSTRUCTION
DEPARTMENT OF FISH WILDLIFE AND PARKS
STATE OF MONTANA

INSTRUCTIONS TO BIDDERS

1. Viewing of Contract Documents

- 1.1. The Contract Documents may be viewed at the Montana Fish, Wildlife, & Parks Web Site, <http://fwp.mt.gov/doingBusiness/designAndConstruction/upcomingBidOpenings.html>
- 1.2. For Additional Information Contact Montana Fish, Wildlife, & Parks Design & Construction:

**Montana Fish, Wildlife, & Parks
Design & Construction
1522 9TH Avenue
P O Box 200701
Helena, MT 59620-0701
PH: 406-841-4000 FX: 406-841-4004**

2. Visits to Site

- 2.1. Prospective bidders are requested to contact the following for inspection of the site:

**Paul Valle L. A.
Montana Fish, Wildlife, & Parks
Design & Construction
1522 9TH Avenue
P O Box 200701
Helena, MT 59620-0701
PH: 406-841-4013 FX: 406-841-4004**

- 2.2. Failure to visit site will not relieve the Contractor of the conditions of the contract.

3. Requests for Substitution

- 3.1. Any requests for product substitution must be made to the Architect/Engineer at least ten (10) calendar days prior to the date of the bid opening for consideration by the Architect/Engineer. Any request for substitution made after this time restriction, including those made after award or during project construction may be rejected without consideration by either the Architect/Engineer or the Owner.

4. Bids/Proposals

- 4.1. The bidder shall submit his bid on the Bid Proposal Form furnished with the Contract Documents.
- 4.2. DO NOT send the Contract Documents with the Proposal. The Contract Documents shall be returned to the Architect/Engineer.
- 4.3. If the project is funded by any portion of federal funds, the following may apply: on certain federally-funded projects, a "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion" form must be submitted with the bid proposal. If the debarment form is not included within the Construction Documents, federal funds (if included) do not require the form or are not included in the project and the debarment form is not required.
- 4.4. Proposals shall be in a sealed envelope and addressed to:

**Department of Fish, Wildlife & Parks
Design & Construction
1522 9TH Avenue
P.O. Box 200701
Helena, MT 59620-0701**

- 4.5. The envelope shall state that it contains a "BID PROPOSAL" and indicate the following information:

Name of Project: **Johnson Creek Fence**
Location: **near Wise River, MT**
FWP Project Number: **14-36**
Name of Bidder: _____
Acknowledge Addendum Number: , , ,

- 4.6. It is the bidder's responsibility to deliver or ensure delivery of the bid proposal to the office of the Architecture & Engineering Division. Proposals received after the scheduled closing time for bids by either the bidder, a delivery service (e.g. Federal Express, U.S. Postal Service, United Parcel Service, etc.), or the state's own mail delivery system, will be rejected. Proposals entitled for consideration must be time-stamped in the Owner's office prior to the closing time for receipt of bids. The official time clock for receipt of bids and fax modifications is the Owner's time and date stamp clock located on the reception desk in the Owner's office. No other clocks, calendars or timepieces are recognized. All bidders are responsible to ensure all bids and fax modifications are received in the Owner's office prior to the scheduled closing time.
- 4.7. If requested on the Bid Proposal Form, any person making a bid to perform the work shall, as a requirement of a responsible bid, set forth the name of each subcontractor specified in the "List of Subcontractors" which is part of the bid proposal. The bidder shall list only one subcontractor for each such portion of work listed. The bidder whose bid is accepted shall not:
- 4.7.1. Substitute any other subcontractor in place of the subcontractor listed in the original bid, except by specific consent of the Owner. The Owner, at its sole discretion, may grant substitution with consent of the originally listed subcontractor, or in consideration of other factor(s) involved if deemed relevant to the successful performance of the Contract.
 - 4.7.2. Permit any such subcontract to be voluntarily assigned, transferred or allow it to be performed by any party other than the subcontractor listed in the original bid without the consent of the Owner.
- 4.8. Bid Proposals entitled to consideration shall be made in accordance with the following instructions:
- 4.8.1. Made upon form provided;
 - 4.8.2. All blank spaces properly filled;
 - 4.8.3. All numbers stated in both writing and in figures;
 - 4.8.4. Shall contain no additions, conditional or alternate bids, erasures or other irregularities;
 - 4.8.5. Shall acknowledge receipt of all addenda issued.
- 4.9. Bid Proposals entitled to consideration shall be signed by the proper representative of the firm submitting the proposal as follows:
- 4.9.1. The principal of a single owner firm;
 - 4.9.2. A principal of a partnership firm;
 - 4.9.3. An officer of an incorporated firm, or an agent whose signature is accompanied by a certified copy of the resolution of the Board of Directors authorizing that agent to sign; or,
 - 4.9.4. Other persons signing for a single-owner firm or a partnership shall attach a power-of-attorney evidencing his authority to sign for that firm.
- 4.10. UNIT PRICES: When a Bid Proposal Form contains unit prices, any errors discovered in the extension of those unit prices will be corrected by the Owner using the unit price figures. The adjusted extended amount will then be used to determine the correct total bid. Only after the amounts have been checked and adjusted, if necessary, will the valid low bid be determined.
- 4.11. ESTIMATED QUANTITIES: All estimated quantities stipulated in the Bid Proposal and other Contract Documents are approximate and are to be used only as a basis for estimating the probable cost of the work and for the purpose of comparing proposals submitted for the work.

It is understood and agreed that the actual amounts of work done and materials furnished under unit price items may vary from such estimated quantities. The actual quantities will depend on the conditions encountered at the time the work is performed.

4.12. Any bidder may modify his bid by fax communication only. It is the bidder's responsibility to ensure that the modification is received at the bid opening location prior to the scheduled closing time for receipt of bids. The modification shall not reveal the bid price, but shall only provide the ADDITION or SUBTRACTION from the original proposal. The Owner is not responsible for the performance of the facsimile machine, maintaining adequate paper levels, toner levels, the telephone connection, quality of the facsimile, or any other factors affecting receipt of the fax. Unreadable or difficult-to-read facsimiles may be rejected at the sole discretion of the Owner. Changes in the listed subcontractors, if any, shall also be provided. Bid modifications must be verified by hard copy provided to the Owner within two (2) business days after the bid opening. Bid modifications shall be directed to fax phone (406) 841-4004. Date and time as indicated at the top of the facsimile may be used in determining time of arrival of the modification.

4.13. The Owner reserves the sole right to reject any or all bids and to waive any irregularities or informalities. The Owner also reserves the sole right to determine what constitutes irregularities or informalities and/or what is material and/or immaterial to the bids received.

5. Bid Security

- 5.1. All proposals \$25,000 or greater shall be accompanied by a bid security in the amount of 10% of the bid price, as evidence of good faith (18-2-302 MCA).
- 5.2. Bid security shall be in the form of lawful moneys of the United States, cashier's check, certified check, bank money order or bank draft, bid bond or bonds payable to the State of Montana (18-2-302 MCA).
- 5.3. If the bidder, to whom a contract is awarded, fails to enter into and execute the proposed contract within fifteen (15) calendar days of award, the bidder shall forfeit the bid security (18-1-204 MCA).
- 5.4. The bid security of unsuccessful bidders will be returned when the contract has been awarded to the successful bidder or when all bids have been rejected (18-1-205 MCA).
- 5.5. Execution of and entering into a contract includes providing all necessary insurance certificates, bonds, signed contract and current copy of the construction contractor registration certificate or registration number.
- 5.6. Note: Per state policy, if cash, check, money order or bank draft are provided as bid security, it will be deposited in the treasury. Unsuccessful bidders will have their security returned upon contract award. The successful bidder's security may be returned upon issuance of notice to proceed.

6. Withdrawal of Bids

- 6.1. Any bidder may withdraw his bid proposal at any time prior to the scheduled closing time for the receipt of bids.
- 6.2. Once the closing time for the receipt of bids is reached, a bid may not be withdrawn for a period of thirty (30) calendar days.
- 6.3. The official time clock for receipt of bids and fax modifications is the Owner's clock and date stamp located on the reception desk in the Owner office. No other clocks, calendars or timepieces are recognized. All bidders are responsible to ensure all bids and fax modifications are received in the Owner's Office prior to the scheduled closing time.

7. Interpretation of Contract Documents

- 7.1. Bidders shall promptly notify the Architect/Engineer of any ambiguity, inconsistency, or error which they may discover upon examination of the Contract Documents or of the site and local conditions.
- 7.2. Bidders requiring clarification or interpretation of the Contract Documents shall request, in writing, clarification from the Architect/Engineer at least ten (10) calendar days prior to the date set for receipt of bids.
- 7.3. Any interpretations, corrections, or change in the Contract Documents prior to the bid opening will be made by written addendum issued by the Architect/Engineer. The Architect/Engineer will endeavor to notify all plan holders of any addenda issued but it shall be the responsibility of the individual bidders to insure they have received all addenda prior to the submission of their bid.
- 7.4. All written addenda issued by the Architect/Engineer will become part of the Contract Documents and all bidders shall be bound by such addenda whether or not received and/or acknowledged by the bidder. No oral or telephone modifications of the Contract Documents will be considered or allowed.

8. Award of Bids

- 8.1. All bids received by the stated hour will be opened and publicly read aloud.
- 8.2. The Owner reserves the right to reject any and all bids and to waive any informality or irregularity in any bid received. The Owner reserves the right to determine what constitutes material and/or immaterial informalities and/or irregularities.
- 8.3. The low bid shall be determined on the basis of the lowest Base Bid or the lowest combination of Base Bid and Alternate Bid, accepted in consecutive order.
- 8.4. The Owner shall award such contract to the lowest responsible bidder (18-1-102 MCA).
 - 8.4.1. The Owner may make such investigations as it deems necessary to determine whether or not any or all bidders are responsible.
 - 8.4.2. The term "responsible" does not refer to pecuniary ability only, nor the ability to tender sufficient performance and payment bonds.
 - 8.4.3. The term "responsible" includes, but is not limited to:
 - 8.4.3.1. Having adequate financial resources to perform the contract or the ability to obtain them;
 - 8.4.3.2. Being able to comply with the required delivery, duration, and performance schedule;
 - 8.4.3.3. Having a satisfactory record of integrity and business ethics;
 - 8.4.3.4. Having the necessary organization, experience, accounting, and operational controls;
 - 8.4.3.5. Having the necessary production, construction, technical equipment, and facilities; and,
 - 8.4.3.6. Having the technical skill, ability, capacity, integrity, performance, experience, lack of claims and disputes, lack of actions on bonds, lack of mediations, arbitrations and/or lawsuits related to construction work or performance, and such like.
 - 8.4.4. Bidders shall furnish to the Owner all information and data for this purpose as the Owner may request.
 - 8.4.5. The Owner reserves the right to reject any bid if the investigation or evidence of any Bidder fails to satisfy the Owner that such Bidder is properly and adequately qualified to suitably perform and satisfactorily execute the obligations of the Contract and Work defined in the Contract Documents.
- 8.5. The Owner shall award such contract to the lowest responsible bidder without regard to residency except on a reciprocal basis: a resident bidder will be allowed a preference on a

contract against the bid of any non-resident bidder from any state or country that enforces a preference for resident bidders. The preference given to resident bidders of the State of Montana must be equal to the preference given in the other state or country (18-1-102, MCA). This does not apply when prohibited by federal requirements.

- 8.6. Montana Fish, Wildlife, & Parks may negotiate deductive changes, not to exceed 7% of the total cost of the project, with the lowest responsible bidder when the lowest responsible bids causes the project cost to exceed the appropriation; or with the lowest responsible bidders if multiple contracts will be awarded on the projects when the total of the lowest responsible bids causes the project cost to exceed the appropriation. A bidder is not required to negotiate his bid but is required to honor his bid for the time specified in the bidding documents. The Owner may terminate negotiations at any time (18-2-105(7) MCA).

9. Contract

- 9.1. The sample Standard Form of Contract between Contractor and Owner, as issued by the Owner, will be used as the contracting instrument and is bound within the Contract Documents.
- 9.2. The form shall be signed by a proper representative of the bidder as defined above in these instructions.
- 9.3. The Contractor shall also complete and return federal form W-9 along with the Contract.

10. Performance, Labor and Material Payment Security

- 10.1. IF THE PROJECT COST IS LESS THAN \$50,000, AT ITS SOLE DISCRETION THE STATE OF MONTANA MAY OR MAY NOT REQUIRE A PERFORMANCE OR LABOR AND MATERIAL PAYMENT SECURITY (18-2-201 MCA).
- 10.2. THE CONTRACTOR SHALL PROVIDE BOTH SECURITIES FOR THIS PROJECT AS SPECIFIED BELOW, UNLESS SPECIFICALLY DIRECTED THAT THIS REQUIREMENT HAS BEEN WAIVED ELSEWHERE IN THESE DOCUMENTS.
- 10.3. The Owner shall require the successful bidder to furnish a Performance Bond in the amount of 100% of the contract price as security for the faithful performance of his contract (18-2-201, MCA). **Required if bid is over \$50,000.**
- 10.4. The Owner shall require the successful bidder to furnish a Labor and Material Payment Bond in the amount of 100% of the contract price as security for the payment of all persons performing labor and furnishing materials in connection therewith (18-2-201 MCA). **Required if bid is over \$50,000.**
- 10.5. The bonds shall be executed on forms furnished by the Owner. No other forms will be acceptable.
- 10.6. The bonds shall be signed in compliance with state statutes (33-17-111 MCA).
- 10.7. Bonds shall be secured from a state-licensed bonding company.
- 10.8. Power of Attorney
- 10.8.1. Attorneys-in-fact who sign contract bonds must file with each bond a certified and effectively dated copy of their power of attorney;
- 10.8.2. One original copy shall be furnished with each set of bonds.
- 10.8.3. Others furnished with a set of bonds may be copies of that original.

11. Notice To Proceed

- 11.1. The successful bidder who is awarded the contract for construction will not be issued a Notice to Proceed until there is a signed Contract, the specified insurance certificates, completed bond forms if applicable, federal form W-9 and a copy of the bidder's current Construction Contractor

Registration Certificate in the Owner's possession. All items are required within fifteen (15) calendar days of contract award made by the Owner.

12. Laws and Regulations

- 12.1. The bidders' attention is directed to the fact that all applicable federal and state laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over the project shall apply to the contract throughout and will be deemed to be included in this contract as if bound herein in full.

13. PAYMENTS

- 13.1. NOTICE OF APPROVAL OF PAYMENT REQUEST PROVISION. Per Title 28, Chapter 2, Part 21, this contract allows the Owner to change the number of days to approve a Contractor's payment request. This contract allows the Owner to approve the Contractor's payment request within thirty-five (35) calendar days after it is received by the Owner without being subject to the accrual of interest.

PROPOSAL
FWP JOHNSON CREEK FENCING
FWP# 14-36

Montana Fish, Wildlife & Parks
Design and Construction
PO Box 200701
1522 9th Avenue
Helena, Montana 59620-0701

The undersigned, having familiarized himself with the conditions of the work and the contract documents as prepared **Paul Valle P.O. Box 200701 Helena Montana 59620-0701 Phone 406 841-4013**, agrees to furnish all labor, materials, equipment, and services necessary to complete all general construction work, as bid herein, for a project entitled **FWP JOHNSON CREEK FENCING** in accordance with the Contract Documents including all Addenda. The bidder agrees to perform all the work described below at the price shown as follows:

Reminder To Contractors: All Unit Prices must be filled in on the Bid Form for a valid bid (18-2-303 MCA).

Base Bid:

Item #	Description	Estimated Quantity	Unit Measure	Unit Price	Amount
1	Mobilization /Demobilization	1	Lump sum		
2	Three-Wire Fence with Steel Posts (All wire double strand smooth)	2,200	foot		
3	Install 18 foot Wire Gates	3	each		
4	Rail Jackleg Fence at Creek Crossing (Four rails on the flat with rub rail and hobbles, 5- 21' panels)	105	foot		
5	Two post panels	6	each		
6	Three post panels	3	each		
7	Jackleg Brace panels	2	each		
Total:				\$ _____	

BASE BID: _____
AND /100 DOLLARS (\$)).

And certifies that he is a duly and regularly licensed contractor registered with the Montana Department of Labor and Industry:

FIRM NAME: _____
TELEPHONE# _____

BY: _____
REGISTRATION# _____

BUSINESS
ADDRESS _____

This bidder acknowledges receipt of the following addenda:

ADDENDUM NO. _____ DATED

ADDENDUM NO. _____ DATED

ADDENDUM NO. _____ DATED



Montana Fish, Wildlife & Parks

DESIGN & CONSTRUCTION

1522 9TH Avenue • P.O. Box 200701 • Helena, Montana 59620-0701

Phone: 406.841.4000 • Fax: 406.841.4004

Sample

STANDARD FORM OF CONTRACT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION FOR WORK UNDER \$25,000

THIS CONTRACT IS SUBJECT TO ARBITRATION PURSUANT TO THE UNIFORM ARBITRATION ACT, MCA TITLE 27, CHAPTER 5

This CONTRACT between the CONTRACTOR (as stated herein below) and the STATE OF MONTANA, acting by and through its DIRECTOR, DEPARTMENT OF FISH, WILDLIFE, & PARKS, hereinafter called the OWNER. WITNESSETH, that the Contractor and the Owner for the consideration hereinafter named agree as follows:

ARTICLE 1. SCOPE OF WORK. The Contractor shall perform all the Work as follows (use attachments as necessary):

Johnson Creek Fence Project, FWP 14-36
Construct ½ mile of four wire fence.

ARTICLE 2. TIME OF COMPLETION. The Work to be performed shall commence on a date set forth by the Department in a written "Notice to Proceed" and shall be completed by **June 15, 2014**. Because actual damages from a breach of this obligation are different and impractical, the parties agree that it is fair and reasonable to assess liquidated damages. Therefore, the parties agree a breach will result in presumed damages of **Fifty And No/100's Dollars (\$0.00)** per calendar day past the completion that the work required under this contract runs. The Work to be performed shall commence on the date set forth in this Contract and shall be completed within or by:

ARTICLE 3. THE CONTRACT SUM. The Owner shall pay the Contractor in current funds for the performance of the Work, subject to additions and deductions by Change Order, the Contract Sum of:

Total Compensation in Alpha & Numeric Notation (\$0.00)

ARTICLE 4. PROGRESS PAYMENTS. Should this Contract extend beyond sixty (60) calendar days, the Owner shall make payments on account of the Contract as follows: Ninety-five percent (95%) of the portion of the Contract Sum for labor, materials, and equipment incorporated in the Work and of materials suitably stored at the project site or at some other location agreed upon in writing. The Owner shall make payment within thirty-five (35) calendar days after receipt of Form 101, Periodic Estimate for Partial Payment request, subject to review and approval. The Contractor shall, within seven (7) days following receipt of payment from the Owner, make payment to any Subcontractor(s) and/or Supplier(s), less any retainage as provided between the Contractor and Subcontractor(s) and or Supplier(s).

ARTICLE 5. FINAL PAYMENT. Final payment constituting the entire unpaid balance of the Contract Sum shall be paid by the Owner to the Contractor when: 1) the Work has been completed to the Owner's satisfaction; 2) the Contract has been fully performed; and 3) an Affidavit on Behalf of the Contractor form has been submitted. The Contractor warrants all workmanship and materials for a period of one (1) calendar year from the date of final payment.

ARTICLE 6. VENUE. In the event of litigation or arbitration concerning the Contract, venue shall be the First Judicial District in and for the County of Lewis and Clark, Montana, and the Contract shall be interpreted according to the laws of Montana.

This Contract entered into as of the day and year written: **Sample Contract Do Not Complete**

CONTRACTOR:

(Company)

(Address)

(City, State, ZIP)

(Signature)

(Date)

Contractor's Registration Certificate No. _____

Tax ID: _____

Incorporated? ____ No ____ yes

OWNER: STATE OF MONTANA

DEPARTMENT OF FISH WILDLIFE & PARKS

DESIGN AND CONSTRUCTION

1522 9TH Avenue • P O Box 200701

Helena MT 59620-0701

For the (Director/Administrator/Project Manager)
Fish Wildlife & Parks

(Date)

ARTICLE 7. MISCELLANEOUS. See next page Contract

Please refer to FWP Project # 14-36 in all correspondence.

ARTICLE 7. MISCELLANEOUS.

1. Taxes/Permits/Fees. The Contractor shall secure and pay for all permits and inspections, give all notices, pay all taxes and fees, and comply with all laws, ordinances, rules, regulations, and lawful orders bearing on the performance of the Work.

2. Labor/Materials Equipment. Unless otherwise specified, the Contractor shall provide and pay for all labor, materials, equipment, tools, utilities, transportation, temporary construction, and services for the proper execution and completion of the Work. Unless otherwise specified, all material and equipment provided shall be new and in good condition. All workmanship shall be of good quality and in keeping with the standard of the respective trades.

3. Hiring Preference and Montana Products Preference. For state construction projects within an Indian reservation, hiring preference will be given to Indian residents of the reservation who have substantially equal qualifications for any position. This preference will apply unless federal law specifically prohibits residency preference.

4. Insurance. The Contractor shall maintain for the duration of the Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the Work by the Contractor, its agents, employees, representatives, assigns, or Subcontractors.

a. Hold Harmless and Indemnification: the Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the contractor, its agents, employees, or any third parties on account of bodily or personal injuries, death, or damage to property arising out of services or Work performed or omissions of work or in any way resulting from the acts, negligent or otherwise, or omissions of the Contractor, its agents, employees, assigns, and/or Subcontractors under this Contract.

b. Contractor's Insurance: **insurance required under all sections herein shall be in effect for the duration of the Contract.** Insurance required herein shall be provided by insurance policies issued only by insurance companies currently authorized to do business in the State of Montana. No Contractor or Subcontractor shall commence Work under this Contract until all required insurance has been obtained. During the term of this Contract, the Contractor shall, not less than thirty (30) days prior to the expiration date of any policy for which a certificate of insurance is required, deliver to the Owner a certificate of insurance with respect to the renewal insurance policy. The Contractor shall furnish one copy of insurance certificates of insurance herein required, which shall specifically set forth evidence of all coverage required by these Contract documents and which shall be signed by authorized representatives of the insurance company or companies evidencing that insurance as required herein is in force and will not be canceled, limited, or restricted without thirty (30) days' written notice by certified mail to the Contractor and the Owner. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits. Additionally, all certificates shall include the project name and A/E project number.

c. The Contractor shall carry **Workers' Compensation Insurance.** Such Workers' Compensation Insurance shall protect the Contractor from claims made by its own employees, the employees of any Subcontractor, and also claims made by anyone directly or indirectly employed by the Contractor or Subcontractor. The Contractor shall require each Subcontractor similarly to provide Workers' Compensation Insurance.

d. The Contractor shall carry **Commercial General Liability Insurance** including coverage for premises, operations, independent contractor's protective, products, and completed operations, broad form property damage, and comprehensive automobile liability insurance with not less than the following limits of liability:

\$1,000,000 per occurrence; aggregate limit of \$2,000,000

The **Commercial General Liability Insurance** and **Automobile Liability Insurance** shall provide coverage for both bodily injury, including accidental death and property damage which may arise out of the Work under this Contract, or operations incidental thereto, whether such Work and operations be by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by the Contractor or the Subcontractor, or by anyone for whose acts any of them may be liable. The Contractor shall maintain completed operations liability insurance required herein for a period of not less than one (1) year after final payment or anytime the Contractor goes on to the location of the project.

i. The Contractor's liability insurance policies shall list the STATE OF MONTANA as an additional insured. The STATE OF MONTANA includes its officers, elected and appointed officials, employees and volunteers, and political subdivisions thereof. Should the Contractor not be able list the State as an additional insured, the Contractor shall purchase a per-occurrence Owner's/Contractor's Protective policy with the STATE OF MONTANA as the insured party in the same occurrence and aggregate limits as those indicated above for the Contractor's Commercial General Liability Insurance policy.

ii. Property damage liability insurance shall be written without any exclusion for injury to or destruction of any building, structure, wires, conduits, pipes, or other property above or below the surface of the ground arising out of the blasting, explosion, pile driving, excavation, filling, grading, or from the moving, shoring, underpinning, raising, or demolition of any building or structure or structural support thereof.

iii. The Contractor's insurance coverage shall be PRIMARY insurance as respects the State, its officers, elected and appointed officials, employees, and volunteers. Any insurance or self-insurance maintained by the State, its officers, elected and appointed officials, employees, and volunteers shall be excess of the Contractor's insurance and shall not contribute to it.

5. Construction Contractor Registration. The Contractor is required to be registered with the Department of Labor & Industry under 39-9-201 and 39-9-204 MCA **before** the Contract is executed by the State of Montana for all projects greater than \$2,500.00, and a copy of the registration certificate must be provided to the Owner.

6. Gross Receipts Tax. In compliance with 15-50-206 MCA, the Contractor will have one percent (1%) of its gross receipts withheld by the Owner from all payments due for Contracts greater than \$5,000.00. Each Subcontractor who performs work greater than \$5,000.00 shall have one percent (1%) of its gross receipts withheld by the Contractor. The Contractor shall notify the Department of Revenue on the department's prescribed forms.

7. Equal Employment Opportunity. All hiring and other employment practices shall be nondiscriminatory, based on merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

8. Record Keeping. Payrolls and basic records pertaining to the project shall be kept on a generally recognized accounting basis and shall be available to the Owner, Legislative Auditor, the Legislative Fiscal Analyst, or his authorized representative at mutually convenient times. Accounting records shall be kept by the Contractor for a period of three (3) years after completion and acceptance of the project by the Owner.

9. Additional Provisions.

i) The Work. The Work to be done under this Contract consists of: Refer to Article 1 for Description Of The Scope Of Work.

- ii) Lump Sum Project. Compensation for this Contract is a Lump Sum, Fixed Fee amount for all that is necessary to complete the Work. Upon written request by the Contractor, the Owner will make progress payments to the Contractor upon verification of percentage complete. If there are services required beyond the scope of this Contract, such services shall be negotiated with the Owner. Services beyond the scope of this Contract must be authorized by the Owner prior to performance of such services or they shall be at the Contractor's expense.

- iii) Performance, Labor and Material Payment Security. To be checked by Owner: **REQUIRED** **NOT REQUIRED**

If required, the successful bidder shall furnish a Performance Bond and a Labor and Material Payment Bond, each in the amount of 100% of the contract price as security for the faithful performance of his contract (18-2-201, Montana Code Annotated). The bonds shall be executed on forms furnished by the Owner—form 112, Performance Bond; and form 113, Labor and Material Payment Bond—no other forms will be acceptable. The bonds shall be signed in compliance with state statutes (33-17-1111, Montana Code Annotated). The bonds shall be secured from a state licensed bonding company. The successful bidder may, in lieu of a surety bond or bonds, provide securities in an amount equal to the contract price for each bond type required, in accordance with (18-2-201, Montana Code Annotated).

- vii) Notification of On-site Operations. The Contractor shall provide a minimum of 12 hours notice to Owner of all times and dates during which Work will be performed at the site. This may be done by written schedules or verbal communication.

viii) LABOR, WAGES, AND MATERIALS

a. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, permits, licenses, goods, products, equipment, tools, construction equipment and machinery, water, heat, all utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work in accordance with the Contract Documents, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

b. The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect/Engineer and in accordance with a Change Order. This opportunity to request substitutions does not negate or waive any requirement for the Contractor to follow a pre-bidding "prior approval" requirement nor obligate the Owner to approve any substitution request.

c. The Contractor shall enforce strict discipline, appropriate behavior, and good order among the Contractor's employees, subcontractors at every tier and level, and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

d. Prevailing Wages and Montana Residents. (IF FEDERAL DAVIS-BACON RATES ARE INCLUDED IN THE CONTRACT DOCUMENTS, THIS PARAGRAPH SHALL BE VOID IN ITS ENTIRETY AND THE CONTRACTOR SHALL COMPLY THE FEDERAL REQUIREMENTS. EXCEPTION: IF THE STATE PREVAILING RATES ARE HIGHER THAN THE FEDERAL, THE CONTRACTOR AND ALL SUBCONTRACTORS SHALL ABIDE BY THE HIGHER RATE SCHEDULE. ALL REPORTING, DOCUMENTATION, ETC. SHALL REMAIN AS PER THE FEDERAL REQUIREMENTS.)

- i. The Contractor and all subcontractors at any level or tier of the Work shall give preference to the employment of bona fide Montana residents in the performance of the Work and shall pay the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions in effect and applicable to the county or locality in which the work is being performed. (18-2-403, MCA)
- ii. At least 50% of the workers, as defined by the Department of Labor & Industry (DOLI), must be bona fide Montana residents. (18-2-401, 18-2-402, MCA)
- iii. Indian Employment Preference within the Boundaries of an Indian Reservation. All contractors that are awarded a state agency construction contract within the exterior boundaries of an Indian Reservation shall extend a hiring preference to qualified Indians as provided herein:
 1. "State agency" means a department, office, board, bureau, commission, agency, or other instrumentality of the executive or judicial branches of the government of this State. "Indian" means a person who is enrolled or who is a lineal descendent of a person enrolled in an enrollment listing of the Bureau of Indian Affairs or in the enrollment listing of a recognized Indian tribe domiciled in the United States.
 2. Qualified Indians – Employment Criteria: An Indian shall be qualified for employment in a permanent, temporary, or seasonal position if he or she has substantially equal qualifications for any position and resides on the reservation where the construction contract is to be performed.
 3. Non-Applicability: The Indian Employment Preference Policy does not apply to a project partially funded with federal-aid money from the United States Department of Transportation or when residency preference laws are specifically prohibited by federal law. It does not apply to independent contractors and their employees, student interns, elected officials, or appointed positions.
- iv. The Commissioner of the Montana Department of Labor and Industry (DOLI) has established the standard prevailing rate of wages in accordance with 18-2-401 and 18-2-402, MCA. The Commissioner of the Montana DOLI has established the resident requirements in accordance with 18-2-409, MCA. The Contractor and all subcontractors at any level or tier of the Work shall direct any and all questions concerning prevailing wage and Montana resident issues for all aspects of the Work to DOLI.
- v. The Contractor and all subcontractors at any tier or level of the Work, and as determined by the Montana DOLI, shall classify all workers in the project in accordance with the State of Montana, Prevailing Wage Rates. In the event the Contractor is unable to classify a worker in accordance with these rates he shall contact DOLI for a determination of the classification and the prevailing wage rate to be paid.
- vi. The Contractor and all subcontractors at any tier or level of the Work shall be responsible for obtaining wage rates for all workers prior to their performing any work on the project. The Contractor is required to pay and insure that its subcontractors at any tier or level and others also pay the prevailing wage determined by the DOLI, insofar as required by Title 18 of the MCA and the pertinent rules and standards of DOLI.
- vii. It is not the responsibility of the Owner to determine who classifies as a subcontractor, sub-subcontractor, material man, supplier, or any other person involved in any aspect of the Work at any tier or level. All such determinations shall be the sole responsibility of the Contractor, subcontractors, sub-subcontractors, material men, suppliers and others involved in the project at any tier or level. The Contractor, subcontractors, sub-subcontractors, material men, suppliers and others involved in the project shall indemnify and hold harmless the Owner from all claims, attorneys' fees, damages and/or awards involving prevailing wage or Montana resident issues. Any changes to wages or penalties for failure to pay the correct wages will be the sole responsibility of the Contractor and/or his subcontractors and no further charges or claims shall be made to the Owner. If the parties mutually agree or an arbitrator or court determines that any change in wages is due and any part is attributable to the Owner, the Owner's sole liability shall be for the amount of wages ordered only and not for other expenses, charges, penalties, overhead, profit or other mark-ups.
- viii. In accordance with 18-2-422(1) MCA, each job classification's standard prevailing wage rate, including fringe benefits, that the contractors and employers shall pay during construction of the project is included herein by both reference to DOLI's "Building" or "Heavy/Highway" schedules.
- ix. The Contractor and every employer, including all subcontractors at any tier or level, is required by 18-2-422(2) MCA to maintain payroll records in a manner readily capable of being certified for submission under 18-2-423 MCA, for a period of not less than 3 years after the contractor's, subcontractor's, or employer's completion of work on the project or the Final Acceptance by the Owner, whichever ever is later.
- x. Each contractor is required by 18-2-422(3) MCA to post in a visible and accessible location a statement of all wages and fringe benefits in compliance with 18-2-423.



Montana Fish, Wildlife & Parks

1522 9th Avenue
P.O. Box 200701
Helena, MT 59620-0701
(406) 841-4003 | Fax: (406) 841-4004

Sample

RE: Johnson Creek Fence Project, FWP # 14-36

To Whom It May Concern:

Enclosed are two (2) copies of the Standard Form Of Contract Between Owner and Contractor For Construction Under \$25,000. Please sign both copies of the Contracts and return them to our office with **Fifteen Days**. **Please note that in order for our office to issue you a “Notice to Proceed,” we also require the following proof of insurance, as stated in the contract:**

- A. **Worker’s Compensation:** The Contractor shall maintain and provide proof of **Worker’s Compensation Insurance**, unless the contractor can provide proof of exemption from Worker’s Compensation, in which case the Contractor is only required to provide **proof of exemption from Worker’s Compensation**. The Contractor shall also provide a **current Certificate of Contractor Registration**.
- B. **Commercial Liability Coverage:** The Contractor shall maintain Commercial General Liability Insurance with \$1,000,000 aggregate limit.
- C. **Automobile Liability Insurance:** The Contractor shall maintain an Automobile Liability Insurance Policy in accordance with state law.
- D. **Proof of Insurance:** The contractor shall provide proof to the Department that the insurance coverages required by this paragraph are in place. These coverages must be sufficient to insure against the covered perils occurring during the term of this contract, regardless of when a claim is made.
- E. **ALL RISK INSURANCE (FOR NEW BUILDING CONSTRUCTION ONLY):** Contractor to provide all risk insurance for the cost of the completed structure.

All insurance certificates must include the project name and FWP number. Montana Fish, Wildlife, & Parks/Design & Construction also needs to be listed as additional insured on the Commercial Liability Certificate. Please make sure your insurance company gets the above information. See specification for complete insurance requirements.

Please feel free to contact me at 841-4001 if you have any questions. Thank you.

Sincerely,

Sue Rice
Contracts Manager
Montana Fish, Wildlife, & Parks
Design & Construction

Encl.



**Montana Fish,
Wildlife & Parks**

DESIGN AND CONSTRUCTION

1522 9th Avenue • P.O. Box 200701
Helena, Montana 59620.0701
Phone: 406.841.4000 • Fax: 406.841.4004

**CONTRACTOR'S AFFIDAVIT OF COMPLETION,
PAYMENT OF DEBTS AND CLAIMS, AND RELEASE OF LIENS**

Project Name: Johnson Creek Fence
Location: near Wise River, MT
FWP #: 14-36

I CERTIFY to the best of my knowledge and belief that all work has been performed and materials supplied in strict accordance with the terms and conditions of the corresponding contract documents between the STATE OF MONTANA, acting by and through its DIRECTOR, DEPARTMENT OF FISH, WILDLIFE AND PARKS, hereinafter called the Owner, and

hereinafter called the CONTRACTOR, for the above referenced project.

I further certify and declare that all bills for materials, supplies, utilities and for all other things furnished or caused to be furnished by the CONTRACTOR and used in the execution of the contract will be fully paid upon receipt of Final Payment and that there are no unpaid obligations, liens, claims, security interests, encumbrances, liabilities and/or demands of State Agencies, subcontractors, materialmen, mechanics, laborers or any others resulting from or arising out of any work done, caused to be done or ordered to be done by the CONTRACTOR under the contract.

In consideration of the prior and final payments made and all payments made for authorized changes, the CONTRACTOR releases and forever discharges the OWNER from any and all obligations, liens, claims, security interests, encumbrances and/or liabilities arising by virtue of the contract and authorized changes between the parties, either verbal or in writing, and any and all claims and demands of every kind and character whatsoever against the OWNER, arising out of or in any way relating to the contract and authorized changes.

I further certify and agree that the warranty period is defined as commencing with Substantial Completion (or with each Substantial Completion if there is more than one) of the Project, or any portion thereof, and continuing for one (1) calendar year from the date of Final Acceptance of the entire project unless otherwise modified in writing as part of the Substantial Completion or Final Acceptance.

This statement is made for the purpose of inducing the OWNER to make FINAL PAYMENT under the terms of the contract, relying on the truth and statements contained herein.

(Seal)

CONTRACTOR

(Signature)

(Title)

Subscribed and sworn to me this ____ Day of ____, ____

(Seal)

NOTARY

Notary Public for the State of Montana
My Commission Expires:



Montana Fish, Wildlife & Parks

DESIGN & CONSTRUCTION
1522 9TH Avenue • P.O. Box 200701
Helena, Montana 59620.0701
Phone: 406.841.4000 • Fax: 406.841.4004

CERTIFICATE OF FINAL ACCEPTANCE

Project Name: Johnson Creek Fence FWP #: 14-36
Location: near Wise River, MT Date: _____

To: **MONTANA FISH WILDLIFE AND PARKS**
DESIGN AND CONSTRUCTION
P.O. BOX 200701
HELENA, MT 59620-0701

Architect/Engineer: Montana Fish Wildlife & Parks

Contractor: _____ Contract Date: _____
_____ Contract Amount: _____

The Work performed under this Contract has been reviewed and found to be complete and has reached Final Acceptance. The Date of Final Acceptance of the Work is defined as the Date Certified by the Architect/Engineer upon which the Work is fully complete in all aspects, **and** which the Owner accepts the Contractor's work as complete. The Date of Final Acceptance of the Project, or portion thereof designated above, is also the basis for commencement of the DURATION of applicable warranties required by the Contract Documents. The Warranty Period is defined in the Contract Documents as commencing with Substantial Completion(s) and continuing for one (1) calendar year from the Date of Final Acceptance. This date shall correspond to the date of the Architect/Engineer's approval on the final pay application unless otherwise agreed upon in writing. In the event of a disparity between the date of the Architect/Engineer's approval and this form, if no other written agreement exists as to the date of final acceptance, this form shall constitute such agreement and it shall govern as the date of Final Acceptance.

Date of Substantial Completion:	Date of Final Acceptance:	Date of Warranty Expiration:

Notes:

Architect/Engineer By _____ Date _____

Contractor By _____ Date _____

Agency By _____ Date _____
State of Montana Department of Fish, Wildlife and Parks,
Design and Construction

Owner By _____ Date _____